IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

SECOND APPEAL NO. 521 OF 2005

Hansarkhan Ajikhan Pathan & Ors.... Appellants.

Versus

Alamkhan Karimkhan & Ors..... Respondents.

Mr. P. S. Dani for the Appellants.

Mr. G. N. Salunke for the Respondents.

CORAM : ANOOP V. MOHTA, J.

DATED : 1ST DECEMBER, 2005.

P.C.:

Heard learned Counsel appearing for the parties.

2. Considering the rival contentions raised by the parties in the Second Appeal whereby, both the courts concurrently, declared that the plaintiffs and defendants are having a common suit property (ABCD & CDEF) Nos.1A and 1B. There is a common passage which passes at the end of the suit property 1-A to approach to the property of the plaintiff out of CTS No. 862. Based on this, the court observed and restrained

defendants, their agents from causing obstruction to peaceful possession and enjoyment of the property.

3. Apart from their respective submissions, the Commissioner's report is on record, which is undisputed, further supports the finding given by both the courts. There is no objection of any kind raised by the parties about respective ownership and/or partition of the property in question. There remained undisputed position in so far as the right of way on the property in question. Having one accepted the position that the parties have common right to use the property in question, basically property 1-A and 1-B, there is no question of putting any obstruction of any of the party on this common property without respective no objection. The suit, therefore, was rightly decreed and injunction as claimed has been granted. The appellate court has confirmed the same.

4. Taking all this into account, apart from the reasoning given by the appellate court, based on the finding of fact that the entire property is held by one person at that time and for proper enjoyment of the properties, this portion has been kept open for egress to all the rooms, even after partition, the

common enjoyment of the property continued from 1968 till the date of the suit, the name of the plaintiffs and defendant No.1 are mutated in the record of rights in respect of the properties No.1A and 1B being kept for common enjoyment. The easementary right and existence of alternate door to strip of property situated at northern end and to the southern end has no way affect the rights of the plaintiffs. After considering this factual aspect and situation of the property in question, I see no reason to interfere with the concurrent finding given by both the courts. There is no perversity as such which need interference from this court in the second appeal.

5. Second appeal is, therefore, dismissed.

Sd/-

(ANOOP V. MOHTA,J.)